

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

DAVID J. JOHN,

Petitioner,

V.

L.S. McEWEN,

Respondent.

No. CV 12-5174-DMG (PLA)

ORDER ACCEPTING MAGISTRATE JUDGE'S THIRD REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Third Amended Petition, the other records on file herein, the Magistrate Judge's Third Report and Recommendation ("Third R&R"), and respondent's Notice of Proposed Correction to Third Report and Recommendation ("Notice"), filed on May 13, 2022.

In the Notice, respondent asserts there are two erroneous factual findings in the Third R&R:

- (1) On page 15, lines 7-9, the R&R states: "If any ASU inmates has reading or comprehension difficulties, ADA ('Americans with Disabilities Act') workers and library clerks are available to assist with reading and writing, and can explain documents."
- (2) On page 19, lines 19-20, the R&R states: "... and for inmates who struggled with reading, writing, or comprehension, ADA workers or library staff were available to provide assistance."

(ECF No. 188 at 2). Respondent explains:

Those references to the availability of ADA workers for ASU inmates would have been based on the direct testimony declaration of Steven Wortman, Ex. 18 ¶5. However, at the evidentiary hearing, Mr. Wortman corrected that aspect of his declaration and testified that inmates in administrative segregation units do not have access to ADA workers. (EH RT at 163-64; *see also* EH RT at 42 (testimony of Robert Subia)). It was therefore undisputed that Petitioner would not have had access to ADA workers while in administrative segregation. However, this correction does not apply to the Court's findings that ASU inmates would have had access to library staff to assist with reading, writing, or comprehension of documents.

(ECF No. 188 at 2).

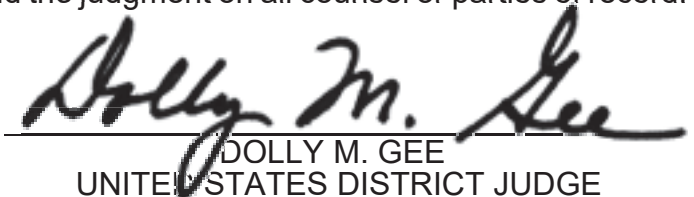
To the extent respondent's Notice can be construed as an objection to the Third R&R, it is untimely, as the Notice was filed after the May 2, 2022, deadline for filing Objections. (ECF No. 187). Nevertheless, the Court has considered the Notice, and concludes that the factual corrections have little to no effect on the equitable tolling analysis, and as such, there is no change to the Court's determination that the Third Amended Petition is time-barred. As respondent points out, although ADA workers were not available to help ASU inmates with reading, writing, and comprehension, ASU inmates still had access to library clerks who could provide this same assistance. (See Evidentiary Hearing ("EH") Exhibit 17 at 2; EH Exhibit 18 at 2).

In light of the above, the Court accepts the findings and recommendations of the Magistrate Judge, except as noted below.

ACCORDINGLY, IT IS ORDERED:

1. The Third Report and Recommendation is accepted, with the exception that on page 15, lines 7-9, and on page 19, lines 19-20, the Third R&R incorrectly states that ADA workers were available to assist ASU inmates with reading, writing, and comprehension.
2. Judgment shall be entered consistent with this Order.
3. The clerk shall serve this order and the judgment on all counsel or parties of record.

DATED: September 1, 2022


DOLLY M. GEE
UNITED STATES DISTRICT JUDGE